

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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| IN THE MATTER OF: |) | |
| |) | |
| GREATER REGIONAL MEDICAL CENTER, |) | |
| Public Employer, |) | |
| |) | |
| and |) | CASE NO. 102390 |
| |) | |
| SERVICE EMPLOYEES INTERNATIONAL |) | |
| UNION, LOCAL 199, |) | |
| Petitioner. |) | |

DECISION AND ORDER

Pursuant to Iowa Code section 20.15(2) and PERB rule 621–15.1(20), a fall 2019 telephonic/web-based election for the retention and recertification of Service Employees International Union, Local 199 (SEIU or Union) was conducted herein under the direction and supervision of the Public Employment Relations Board (PERB or Board), Case No. BU-0885. The election was conducted for the purpose of determining whether SEIU-represented hospital workers employed by the Greater Regional Medical Center (GRMC) wished to retain SEIU as the exclusive bargaining representative for their bargaining unit.

PERB’s tally of votes on October 29, 2019, determined that the required majority of employees in the bargaining unit did not vote to retain SEIU as their exclusive bargaining representative. SEIU subsequently filed an objection to the election pursuant to Iowa Code section 20.15(4) and PERB subrule 5.4(2)(g), alleging that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences and praying that the election be invalidated and a second election held.

Pursuant to notice, an evidentiary hearing on the objection was held before the Board on February 12, 2020. SEIU was represented by attorney Jim Jacobson and GRMC was represented by attorneys Frank Hardy and Ryan Stefani. Both parties filed post-hearing briefs, the last of which was filed on February 24, 2020.

Based on our review of the record, the parties' briefs, and arguments presented by the parties, SEIU's objection to the election is OVERRULED.

I. FINDINGS OF FACT.

GRMC is a public employer within the meaning of Iowa Code section 20.3(10).¹ SEIU is an employee organization within the meaning of Iowa Code section 20.3(4) and is the certified representative for BU-0885, the bargaining unit of over 260 employees who work in various job classifications for GRMC. Cassie Wilmeth is the local SEIU President and works as a cook for GRMC.

After chapter 20 was amended in 2017, PERB conducted fall 2017 telephonic/web-based retention and recertification elections, including one for BU-0885. Elections are required for certified employee organizations and their respective units that have a collective bargaining agreement due to expire the following year. The election is conducted for the purpose of determining whether the bargaining unit employees wish to retain their certified representative. The majority required to win retention is now based on the number of eligible voters in the unit rather than the number of votes cast.

¹ All references are to Iowa Code (2019).

In 2017, PERB recertified SEIU after the majority of BU-0885 eligible voters cast votes in favor of SEIU's retention. For this unit, PERB conducted a retention and recertification election again in 2019. PERB conducted the 2019 election according to the following schedule:

| | |
|---------------|---|
| August 26 | Deadline for employer to submit contract PERB eFiles Notice of Intent to Conduct an Election PERB eFiles Notice to Employees |
| September 3 | Deadline for a party to eFile an objection to Notice Deadline for a party to eFile objection that Notice not filed Deadline for employer to email list of eligible voters to PERB PERB redacts list and provides to union PERB further redacts voter list and eFiles list in BU case Election fee is determined based on voter list Vendor begins building platforms based on lists from PERB |
| September 16 | Deadline for union to pay election fee |
| September 18 | PERB eFiles Order Directing Election |
| September 25 | Deadline for employer to submit a second list if changes |
| October 8 | Deadline for union to propose list changes to employer Deadline for parties to submit mutually amended voter list Deadline for union to eFile a challenge to a voter's eligibility |
| October 15-29 | Telephonic/web-based voting period |
| October 29 | Tally of votes |
| November 8 | Deadline for party to eFile an objection to the election Deadline for a union to eFile a postelection challenge |

PERB maintains an electronic document management system (EDMS) and utilizes electronic filing for each election case.

PERB filed its Notice to Conduct an Election on August 26, 2019, with the voting schedule and explicit instructions to the employer to post the separately-filed Notice to Employees. The instructions read as follows:

The **Employer shall promptly post the Notice to Employees** in the manner and locations customarily used for posting. That notice shall remain posted until **September 18, 2019**. If the Employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the **Employer shall**

promptly distribute the Notice to Employees to the affected employees through those means as well.

The Notice to Employees, filed that same day, explained the purpose of the election and indicated that a Notice of Election would be posted in mid-September and the election period would run 8:00 a.m. on Tuesday, October 15, 2019, to 9:00 a.m. on Tuesday, October 29, 2019. The notice contained the unit's description of job classifications.

The Notice of Intent to Conduct an Election also contained instructions to the employer to email, by September 3, an Excel spreadsheet of eligible voters' contact information, which included: names; job classifications; home addresses; work and personal (if known) email addresses; and work and personal (if known) telephone numbers.

On August 29, 2019, PERB received the voter list from GRMC and emailed the list to SEIU. The list provided to SEIU included the names of all 266 eligible voters in Case No. BU-0885 and their job classifications; home addresses; work email addresses; personal email addresses for all but 27; work telephone numbers; and personal telephone numbers for all but 17. The 27 voters without listed personal email addresses are not the same voters as the 17 voters without listed personal telephone numbers. PERB administrative rules do not require personal email addresses and GRMC does not require employees to provide their personal email addresses. However, GRMC listed the 239 personal email addresses that had been provided by employees to GRMC.

PERB filed its Order Directing the Election on September 18, 2019. Attached to PERB's order was a Notice of Telephone and Web-Based Retention

and Recertification Election notice to employees. The document's heading contained the same explicit instructions for the employer's posting of the information to bargaining unit employees:

THE EMPLOYER SHALL PROMPTLY POST THIS NOTICE AND ATTACHED DOCUMENTS IN THE MANNER AND LOCATIONS CUSTOMARILY USED FOR POSTING. THESE NOTICES SHALL REMAIN POSTED UNTIL THE EMPLOYER RECEIVES NOTIFICATION OF THE TALLY OF BALLOTS AT THE CONCLUSION OF THE ELECTION. IF THE EMPLOYER CUSTOMARILY DISTRIBUTES INFORMATION TO EMPLOYEES BY ADDITIONAL MEANS, SUCH AS BY E-MAIL OR HARD COPY, THE EMPLOYER SHALL PROMPTLY DISTRIBUTE THESE NOTICES TO THE AFFECTED EMPLOYEES THROUGH THOSE MEANS AS WELL.

The other attached documents referenced included a voting schedule, voting instructions, and a bargaining unit description.

To campaign for this election, SEIU sent out one mailing approximately two weeks before the voting period and a second one after the actual voting started. SEIU made telephone calls to voters, but only reached about 30 percent of the voters. SEIU speculates many calls were not answered when the SEIU caller was not identified.

As a third manner of campaigning, SEIU emailed all 260 plus members at their workplace email addresses, on four separate occasions: October 2, 4, 21, and 28. GRMC's email security system, Cisco IronPort considers mass emails spam and quarantined the emails on each occasion. For each email quarantined, the recipient received an Outlook inbox message, "Cisco Spam Quarantine." By clicking on the message, the recipient could then see the identity of the sender and the message such as "SEIU" or "Important Information about Upcoming Union Recertification." The recipient could then click again to

open and read the SEIU message. Outlook allows recipients to green flag the sender email address to allow future messages from that specific sender.

Only a few emails went through without quarantine. Wilmeth notified SEIU of the quarantined emails towards the end of the second week of voting on October 24 or 25. No one notified GRMC. GRMC's IT Director, Karla Alford, was not aware of the quarantined messages. Alford was only alerted to quarantined mass emails that significantly impacted the system. Had Alford been made aware, she could have gone through the server and "white listed" the SEIU email address to prevent quarantines.

SEIU representatives did not visit eligible voters on GRMC premises as some had done for the 2017 retention election. Wilmeth characterized this decision as her "judgment call" she made based on her past experiences. She testified she felt "pushback" from GRMC when SEIU representatives had visited in 2017. In her opinion, GRMC had tried to say SEIU was harassing people at lunch. She did not want to "overstep" her boundaries.

There had also been an incident in May 2019, when the GRMC Chief Human Resources Officer, Amy Rieck, denied SEIU (statewide) President, Cathy Glasson's request to visit SEIU members in the cafeteria to celebrate Nurses' Week. The request was denied as a "violation of our solicitation and distribution policy for an outside business to meet and sit in the cafeteria and pass out food to employees." It does not appear that there was an attempt to resolve this issue, *i.e.*, SEIU visits to GRMC. Instead, the SEIU representative met with members at a nearby restaurant.

SEIU representatives, including Cathy Glasson, have visited members at GRMC in past years. Based on testimony at hearing, GRMC's policy allows employees to visit with one another at lunch and break times. Outside parties are allowed access to the cafeteria and non-patient areas for social events. Nonetheless, no one from SEIU or Wilmeth contacted GRMC to coordinate SEIU election campaign visits or to discuss any issues that had arisen in May.

The retention election telephonic and web-based voting began on October 15, 2019. PERB emailed a voting participation chart of all elections, including the BU-0885 election, to representatives on October 15, 16, 17, 18, 21, 22, 23, 24, 25, and 28, 2019. On October 18, 25, and 28, charts were provided twice a day.

Voting ended on October 29, 2019. PERB's tally of votes for BU-0885 was based on 266 eligible voters and a required majority of 134 votes to retain SEIU as the certified representative. PERB tallied 116 "yes" votes and 13 "no" votes.

SEIU filed a timely objection to the election. At hearing, GRMC stipulated that eligible voters were 260 with a required majority of 131 "yes" votes to retain SEIU.

II. CONCLUSIONS OF LAW.

SEIU alleges circumstances other than misconduct prevented the BU-0885 eligible voters from freely expressing their preferences because SEIU's campaign email communications to the work email addresses of voters were quarantined on four separate occasions around the election period. SEIU alleges no misconduct on the part of GRMC in this regard.

Iowa Code section 20.15(4) provides that the Board may invalidate an election and hold a second election if it “finds that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences.” PERB subrule 621—5.4(2)(g) provides in part:

621—5.4(20) Objections to an election.

.....

5.4(2) *Objectionable conduct during election campaigns.* The following types of activity, ... if determined by the agency that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

.....

g. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

Iowa Admin. Code r. 621—5.4.

In the present case, there is a lack of objective evidence to establish the BU-0885 eligible voters were prevented from freely expressing their preferences. While it is unfortunate that the SEIU communications were quarantined, there were a number of alternative options for SEIU to contact voters over a significant period of time, from August 29 when the voter list was provided to October 29 when voting ended.

We agree with SEIU that a voter list with points of contact promotes fair and free elections by maximizing the likelihood that all voters will be exposed to the arguments for, as well as against, union representation. We are not persuaded, however, that the failure of one point of contact prevents the voters from freely expressing their preferences in an election. That said, for the BU-0885 unit of 260 eligible voters, SEIU was provided an Excel spreadsheet of eligible voters’ names, job classifications, their home addresses, their work and

personal email addresses, if known, and their work and personal telephone numbers, if known. This was provided on August 29, which gave SEIU approximately two months to communicate with eligible voters.

There were alternative options available for SEIU to communicate with its members. Included in the Excel list provided to SEIU was the personal email addresses for all, but 27 eligible voters although GRMC does not require its employees to provide personal email addresses. PERB subrule 15.2(2)(a)(1) requires the employer to provide,

an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit.

Iowa Admin. Code r. 15.2(2)(a)(1). SEIU did not present evidence to reflect whether it sent the mass communications to the voters' personal email addresses. Nonetheless, it was an available avenue of communication for over 90 percent of the voters.

SEIU was able to send two mailings to the voters. SEIU may have had the option of visiting with voters in the cafeteria as it had done in the past. We find Wilmeth's fear of "overstepping" her boundaries with her employer credible, but we cannot conclude that SEIU's visit to the premises was not a viable option based on the subjective "judgment call" of one person. There is no evidence that for this 2019 election, SEIU representatives made a specific request to visit voters in the GRMC cafeteria and were turned down by GRMC.

We understand SEIU pursued other available options, *i.e.*, telephone contacts and work emails, that were not so successful. In this regard, voters

who choose to not answer their telephones or not open spam notifications may be making discretionary choices in their communications. This does not mean they are prevented from freely expressing their preferences in an election when contact from the certified representative fails. It is understandably a challenge in reaching voters, but the voters in this case were aware of the upcoming election. PERB notices were posted in the workplace, beginning August 26, 2019, alerting eligible voters of the upcoming election. A second notice was posted on September 18, 2019, and provided specific voting instructions and the voting calendar.

This may be a different case had there been an allegation and evidence that GRMC singled out SEIU communications for quarantine. Such is not the case. SEIU's communications sent on October 2, 4, 21, and 28 were all quarantined because, as mass mailings, they were identified as spam by the Cisco security system. Wilmeth did not notify SEIU about the quarantine until October 24 or 25. No one notified GRMC. It is likely there are people who opened the spam notification and the underlying SEIU communication. There is no evidence to specify when the quarantined emails were first discovered or its impact on voters.

Despite the quarantine, SEIU had a number of available options in which to communicate with BU-0885 eligible voters. SEIU received the Excel voter list with more than the minimally-required contact information. This list was given to SEIU on August 29, which gave SEIU almost two months to campaign and communicate with its member before the election ended and PERB tallied the

votes. SEIU failed to establish the existence of any circumstances which prevented the BU-0885 eligible voters from freely expressing their preferences in the retention and recertification election.

III. CONCLUSION.

SEIU did not meet its burden to establish the existence of circumstances that prevented the eligible voters of BU-0885 from freely expressing their preferences in the election.

Accordingly, we enter the following:

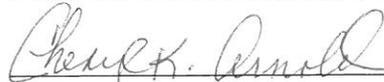
ORDER

The objection of the Service Employees International Union, Local 199 is **OVERRULED**. The Board will issue an order of decertification concerning Service Employees International Union and its representation of the bargaining unit of the Greater Regional Medical Center employees, referred to as "BU-0885."

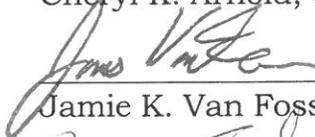
This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 4th day of March, 2020.

PUBLIC EMPLOYMENT RELATIONS BOARD



Cheryl K. Arnold, Chairperson



Jamie K. Van Fossen, Board Member



Mary T. Gannon, Board Member

Original filed EDMS.